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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/643,402	08/19/2003	Sten Kvist	Strom.7267	3995

55740 7590 10/30/2008

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EXAMINER	
WONG, LESLIE A	

ART UNIT	PAPER NUMBER
1794	

MAIL DATE	DELIVERY MODE
10/30/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/643,402	KVIST ET AL.	
	Examiner	Art Unit	
	Leslie Wong	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *07 March 2008 and 10 July 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,3,4,6-8,10-28,31,33,34,36-38 and 40-44* is/are pending in the application.

4a) Of the above claim(s) *40 and 41* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1, 3, 4, 6-8, 10-28, 31, 33, 34, 36-38, and 42-44* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *5/12/2008*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

It is noted that with the amendment of March 7, 2008, amended claims 31, 33, 34, 36-38, and new claim 44 will be added to Group I and examined in this action.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 3, 4, 6-8, 10-28, 31, 33, 34, 36-38, and 42-44 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 and its dependent claims are indefinite as to the use of “i.e.” and the multiple use of “optional” as it is not clear which steps are claimed and which steps are necessary for the claimed invention. The preamble of the claim is not clearly set forth. For purposes of examination "wherein" is interpreted to mean "comprising."

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 11-28, 31, 33, 34, and 36-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bjurenvall (US 7,005,155) in view of Burrows et al (US 4,435,429).

Bjurenvall disclose a process for manufacturing a cereal product wherein bran is fractionated into glucose, protein, and fiber (see Figure 2). Bjurenvall disclose a

process where the bran obtained from milling is subjected to enzyme hydrolysis using amylase and amyloglucosidase at a pH of 4.5 to 5.2 and a temperature of 50 to 75°C, whereby glucose syrup, protein, and bran are obtained as end products (see entire patent, especially column 2, line 53 to column 4, line 5).

The claims differ as to the specific recitation of centrifugation.

Burrows et al disclose a cereal grain fractionation where centrifugation is used to separate fractions (see entire patent, especially column 4, lines 3-10).

It would have been obvious to a person of ordinary skill in the art, at the time the invention was made, to use centrifugation as taught by Burrows et al in that of Bjurenvall because the use of centrifugation to separate fractions is conventional and well-known in the cereal grain art. Applicant is using known components and process steps to obtain no more than expected results.

With respect to Applicant's limitations as to percent protein, sugar, oil, and fiber within the fractions it is not seen that this would differ from that of the prior art as the same components and steps are used. It is further noted that the use and manipulation of enzymes to hydrolyze cereals is conventional in the art. The amounts employed are no more than a matter of choice.

Applicant's arguments filed March 7, 2008 have been fully considered but they are not persuasive.

Applicant argues that the starting material of Bjurenvall contains bran and flour.

Bjurenvall disclose a process for manufacturing a cereal product wherein bran is fractionated into glucose, protein, and fiber (see Figure 2) as is claimed. Applicant does not exclude additional components of Bjurenvall.

The recitation that the product is made by a new process, if the process were indeed new and patentable, does not render an otherwise unpatentable product new and patentable. It is pointed out that the rejected claims are product claims and not process claims. The product must stand on its own invention, independently of the process of producing same. See In re Marosi, 218 USPQ 195; In re Thorpe, 227 USPQ 964; Ex parte Jungfer, 18 USPQ 2nd 1976.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leslie Wong whose telephone number is (571)272-1411. The examiner can normally be reached on Tuesday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Leslie Wong/
Primary Examiner, Art Unit 1794

LAW
October 24, 2008